

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

ST. LOUIS COUNTY FIRE FIGHTERS	)	
ASSOCIATION, LOCAL 398, INTER-	)	
NATIONAL ASSOCIATION OF FIRE	)	
FIGHTERS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Public Case No. 77-014
	)	
CITY OF HAZELWOOD, MISSOURI,	)	
	)	
Respondent.	)	

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION**

**FINDINGS OF FACT**

This case appears before the State Board of Mediation upon St. Louis County Fire Fighters Association, Local 398, IAFF, (hereinafter referred to as "Petitioner"), filing a Petition for the determination of an appropriate bargaining unit and majority of representative status for all Fire Department employees of the City of Hazelwood, Missouri, inclusive of the ranks of probationary Fire Fighter, Fire Fighter or Private, Lieutenant, Captain, and Fire Chief, all of which constitute approximately twenty-six (26) employees.

The City of Hazelwood, Missouri, (hereinafter referred to as "Respondent"), has objected to the inclusion in an appropriate unit the positions of Fire Chief, Captain, and Lieutenant, for the reason that these individuals are supervisory and therefore do not share a clear and identifiable community of interest with the other employees within the Department. The Respondent further contends that probationary Fire Fighters have not

achieved a permanent employment status with the Department and therefore should also be excluded from a definition of an appropriate unit.

The State Board of Mediation has jurisdiction to hear and decide this case pursuant to Section 105.525 RSMo. 1969, which provides in pertinent part:

"Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation."

A hearing in this matter was conducted by a quorum of the Board at the St. Louis County Government Center in Clayton, Missouri, at which time the following evidence was adduced.

The Fire Department of the City of Hazelwood consists of one firehouse and employs twenty-six (26) individuals; one Fire Chief, four Captains, one Lieutenant, twelve Fire Fighters, and eight probationary Fire Fighters.

The Department operates on three twenty-four hour shifts. Two of the shifts are staffed with one Captain and seven Fire Fighters. The third shift has one Captain, one Lieutenant, and six Fire Fighters.

A description of each of the positions in dispute is set forth in separate paragraphs in this opinion.

#### Fire Chief

The Fire Chief is the senior officer of the Department and is responsible for the day to day operation of the Department. The Chief has the authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees. He exercises independent judgment in the supervision of employees.

#### Captain

The Captain, of which there are four positions, is second command in the Department. Three Captains work separate twenty-four hour shifts and reside at the fire house with the Fire Fighters. He is responsible for the training of five personnel in fire

fighting practices, procedures and policy. In addition, he responds to alarms and commands and directs operations unless relieved by the Chief. He keeps such records as are necessary to insure efficient operation of his command and has the responsibility of enforcing rules, regulations and orders. The Captain effectively recommends the promotion, discipline or discharge of employees.

The fourth Captain works a five-day, forty-hour week. He also acts as second in command and in the absence of the Chief he assumes control of the Department and performs the duties and exercises the power incidental to the office of Chief. He does not reside with the Fire Fighters. He performs fire inspections of commercial, industrial and residential buildings; prepares inspection records and reports.

All Captains, while on duty, wear white shirts with gold badges.

#### Lieutenant

The Fire Department presently has one position designated as Lieutenant. This individual functions as a Line Officer and may assume the responsibility of Company Officer (Captain) in the Officer's absence. The duties of the Lieutenant include the following: maintains extensive records related to personnel, equipment maintenance, Fire Department responses, building inventories and general fire service files; responds to fire alarms; supervises and participates in laying and connecting hose and hose nozzles and directs water streams; uses chemical extinguishers, bars, hooks lines and other fire service equipment; operates pumps, ladders, vehicles and other auxiliary equipment; participates in and supervises rescue operations and administers first aid as required; participates, supervises and instructs fire drills, civil defense drills; attends advance classes in firefighting, first aid and fire equipment and apparatus construction and operation; supervises and performs general maintenance work in the upkeep of fire property; cleans and washes walls and floors and inspects the work of subordinate fire personnel.

The Lieutenant works a twenty-four-hour shift and resides in the fire house with the Fire Fighters.

#### Probationary Fire Fighter

At the time of this hearing, there were eight employees of the Fire Department who were classified as probationary Fire Fighters. All newly hired Fire Fighters undergo a probationary period of employment during their first year. A Fire Fighter may be released without prejudice at any time during his probationary period provided the Chief submits evidence to the City Manager justifying the need for dismissal. The services of the new employee are retained at the end of the probationary period unless the Chief does not recommend permanent appointment.

The duties of the probationary Fire Fighters do not differ in a substantial manner from those of a regular Fire Fighter.

The position of Fire Fighter is not in dispute and therefore the Board will not address itself to that classification.

#### **CONCLUSIONS OF LAW**

Section 105.525 RSMo. 1969 states:

"Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation..."

Appropriate unit is defined in Section 105.500 (1) RSMo. 1969 as:

"... a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

It is the position of this Board that supervisors cannot be included in the same bargaining unit as the employees whom they supervise, because of a lack of community of interest. Therefore, it is necessary to make a determination as to the positions which possess supervisory qualities. In the case of Western Missouri Public Employees, Local 1812 and Missouri State Council 72, AFSCME vs. Jackson County, Missouri

(Department of Corrections), Public Case No. 90, this board set forth the factors which are considered in determining whether an employee is a supervisor. They are as follows:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees.

Upon a careful review of the duties and responsibilities of the position of Fire Chief, it is quite clear he possesses supervisory authority and therefore should be excluded from an appropriate unit of non-supervisory employees. Without going into a detailed review of the Fire Chief's duties, it can be readily seen that all factors which constitute a supervisor are applicable to this position.

This Board has carefully considered the duties and responsibilities surrounding the position of Captain and is of the opinion that this individual constitutes supervisory personnel for the reason that a majority of his time is spent in a supervisory capacity. It is true that he works the same shift and lives in the same house as the other Fire Fighters, however, he has the responsibility of the operation of the fire station during his shift of duty. It is also true that he may fight a fire along with the Fire Fighters, but this is a limited situation. The Captains exercise management functions. The competent and

substantial evidence upon the record indicates that the position of Captain is supervisory and is to be excluded from a unit of non-supervisory personnel.

The position of Lieutenant is not one of a supervisory nature as defined by this Board for the reasons that it is questionable as to whether the Lieutenant has the authority to effectively recommend the hiring, promotion or discharge of employees, in this instance Fire Fighters. He supervises a small number of men and the evidence clearly indicates he is a working supervisor or leadsman. There is a definite showing of a community of interest between the position of Lieutenant and Fire Fighter. They fight the fire together in every aspect, they live together and work the same hours.

In reference to the position of probationary Fire Fighter, it is the opinion of the Board that employees who are subject to the same working conditions and whose duties are substantially the same as the other Fire Fighters, will be included in an appropriate unit on the grounds that the probationary employees share a significant community of interest with the other employees involved. It is also understood that the probationary employees have a considerable expectancy of permanent employment with the Fire Department.

### **DECISION**

It is the decision of the State Board of Mediation that an appropriate unit of Fire Department employees of the City of Hazelwood is as follows:

All Fire Department employees of the City of Hazelwood, Missouri including the positions of probationary Fire Fighter, Fire Fighter, and Lieutenant, but excluding the positions of Captain and Fire Chief.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than thirty (30) days from the date below. The exact time and

place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out, ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by St. Louis County Fire Fighters Association, Local No. 398, International Association of Fire Fighters, AFL-CIO.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within ten (10) days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Entered this 23rd day of November, 1977.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Michael Horn  
Michael Horn, Chairman

/s/ H. R. Scott  
Harry R. Scott, Employer Member

/s/ Richard Mantia  
Richard Mantia, Labor Member